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March 21, 1918, § 10 (U. S. Comp. St. 1918, U. S. Comp. St. Ann. Supp. 1919, § 3115¾j), providing that carriers under federal control shall be subject to all laws and liabilities as common carriers except in so far as might be inconsistent with such control, preserved to the public the benefit of bringing actions in the same courts, by the forms of procedure and practice in force before the roads were taken over by the government.

6. Railroads (§ 5¼*)—New, vol. 6A Key-No. Series—Declaration Amendable by Corrected Name of Federal Agent.—Under Code 1919, § 6104, allowing liberal rights of amending pleadings, in a suit against an agent designated by the President to defend actions against railroads under federal control, plaintiff may amend the declaration by correcting the name of the agent.

7. Pleading (§ 230*)—Statute Allowing Amendment Liberally Construed.—Code 1919, § 6104, providing for amendment of pleadings, should be liberally construed.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 318.]

Error to Circuit Court, Clarke County.

Action by Bailey against Walker D. Hines, Director General of Railroads. From judgment for defendant, plaintiff brings error. Reversed.

Curry, Curry & Lewis, for plaintiff in error.

Wm. F. Keyser, of Luray, and *W. R. Staples*, of Roanoke, for defendant in error.

EWING et al. v. BOARD OF SUP'RS OF NELSON COUNTY.

Nov. 17, 1921.

[109 S. E. 474.]

1. Eminent Domain (§ 262 (4)*)—Finding of Damages in Condemnation Proceeding Not Disturbed.—Where the reviewing court is unable to say that finding as to amount of damages in eminent domain proceeding is without substantial support, it will not interfere.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 66 et seq.]

2. Highways (§ 41 (4)*)—Proceedings to Establish Road Held Not Erroneous because Viewers Were Permitted to Give Opinion as to Proper Width.—Proceedings to establish a road were not erroneous because viewers appointed under Code 1919, § 1977, were directed to report on the question as to how wide the road should be, the width

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

of the road as finally fixed representing the independent judgment and action of the supervisors.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 862 et seq.]

3. Highways (§ 33*)—County Supervisors, Proceeding under General Law to Establish Road, Held Not Required to File Map or Plat.—Though in proceedings under the General Road Law (Code 1919, §§ 1977-1980) commissioners appointed to condemn land are directed by section 1980 to comply with the eminent domain law so far as applicable, and section 4385 provides that the proceedings to condemn a right of way shall be according to the provisions of the eminent domain chapter, county supervisors, in proceedings to establish a road under the general law, wherein no commissioners were appointed, and wherein the viewers returned with their report a map or diagram contemplated by section 1978, were not required to file a map or plat showing the cuts, fills, trestles, bridges, etc., pursuant to section 4364, the direction in section 1980, relating to the oath, procedure, and report pursuant to sections 4366 to 4368, and it being evident that the viewers in such case had, and that commissioners in every case under the general law will have, the benefit of such surveying as may be necessary to determine the location, width, and grade of the road, and thus be able to determine approximately the amount of work to be done, and fix the damages accordingly.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 862 et seq.]

Error to Circuit Court, Nelson County.

Proceeding by the Board of Supervisors of Nelson County to establish a road through the lands of H. and H. N. Ewing. From an order establishing the road and fixing the compensation, the landowners bring error. Affirmed.

J. T. Coleman, Jr., of Lynchburg, for plaintiffs in error.

S. B. Whitehead and *L. Grafton Tucker*, both of Livingston, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.